

ROBB, Judge

Case Summary and Issue

Joseph Elliot appeals the trial court's dissolution decree, which dissolved his marriage to Wanda Elliot and divided the marital estate between Joseph and Wanda. On appeal, Joseph raises one issue, which we restate as whether the trial court properly included proceeds from a lump-sum worker's compensation settlement award (the "Settlement Proceeds") as marital property subject to division. Concluding the trial court did not abuse its discretion in including the Settlement Proceeds as marital property subject to division, we affirm.

Facts and Procedural History

Joseph and Wanda were married on September 25, 1981. In 1999, Joseph suffered a near-fatal injury at work that left him unable to work for the next year. Joseph received worker's compensation benefits while he was unable to work and "decided to go ahead and retire" at some point in 2000. Transcript at 11. In May 2000, Joseph reached a settlement with his employer whereby Joseph's employer agreed to pay him Settlement Proceeds in the amount of \$158,250, presumably in lieu of future payments of worker's compensation benefits and in exchange for a release of any present and future claims Joseph might have. According to a letter from Joseph's employer's attorney, \$125,425 of the Settlement Proceeds represents payment for a "permanent partial impairment rating of 74%" and \$33,095 represents a "good will payment."¹ Petitioner's Exhibit 2, at 1. Although the record is not entirely clear, Joseph apparently deposited the Settlement Proceeds into several

¹ We recognize these amounts total \$158,520, not \$158,250. However, the parties both contend the Settlement Proceeds totaled \$158,250 and, at any rate, the discrepancy is irrelevant for purposes of this appeal.

investment accounts that were titled to both him and Wanda.²

On April 12, 2006, Joseph filed a petition for dissolution of marriage. On December 17, 2007, the trial court conducted a final hearing, at which it heard testimony from Joseph and Wanda and admitted several documentary exhibits into evidence. On January 2, 2008, the trial court entered a dissolution decree dissolving the parties' marriage and finding that the Settlement Proceeds were a marital asset subject to division. Based on this finding, the trial court ordered the parties to equally divide the Settlement Proceeds. Joseph now appeals.

Discussion and Decision

I. Standard of Review

The disposition of marital assets is within the trial court's discretion. Hatten v. Hatten, 825 N.E.2d 791, 794 (Ind. Ct. App. 2005), trans. denied. "When a party challenges the trial court's division of marital property, he must overcome a strong presumption that the court considered and complied with the applicable statute, and that presumption is one of the strongest presumptions applicable to our consideration on appeal." Id. (quoting In re Marriage of Bartley, 712 N.E.2d 537, 542 (Ind. Ct. App. 1999)).

Indiana's Dissolution of Marriage Act, Indiana Code article 31-15, requires the trial court to divide the property of those who are parties to a dissolution proceeding, see Ind. Code § 31-15-7-4(a), starting with the presumption "that an equal division of the marital property between the parties is just and reasonable," Ind. Code § 31-15-7-5. Indiana Code section 31-9-2-98(b) defines "property" for purposes of the Act as

² At the final hearing, Joseph could not recall some of the names of the investment accounts, but the parties nevertheless agree that all of the Settlement Proceeds were deposited into several investment accounts and that those accounts were jointly titled. See Appellant's Brief at 4; Appellee's Brief at 2.

all the assets of either party or both parties, including:

- (1) a present right to withdraw pension or retirement benefits;
- (2) the right to receive pension or retirement benefits that are not forfeited upon termination of employment or that are vested (as defined in Section 411 of the Internal Revenue Code) but that are payable after the dissolution of marriage; and
- (3) the right to receive disposable retired or retainer pay (as defined in 10 U.S.C. 1408(a)) acquired during the marriage that is or may be payable after the dissolution of marriage.

Joseph argues the trial court abused its discretion when it divided the Settlement Proceeds equally between him and Wanda because the proceeds are not “property” within the meaning of Indiana Code section 31-15-7-5 and therefore are not subject to division. It is well-established that determining whether worker’s compensation benefits are marital property turns on whether the benefits replaced lost future income for the period before the dissolution petition was filed or for the period after the filing. See Leisure v. Leisure, 605 N.E.2d 755, 759 (Ind. 1993); Shannon v. Shannon, 847 N.E.2d 203, 205 (Ind. Ct. App. 2006), trans. denied. Although “a trial court may not divide the future earnings of a party in anticipation that they will be earned . . . worker’s compensation benefits received during the marriage to replace earnings of that period are a marital asset subject to distribution.” Shannon, 847 N.E.2d at 205 (emphasis in original). In cases such as this one where the worker’s compensation benefits are reduced to a lump-sum payment, it is incumbent on the party seeking to exclude such benefits to show what portion of the payment represents lost income for the period after the dissolution petition was filed so that amount may be properly excluded from marital property. See id. at 205-06.

Here, Joseph was injured in 1999, received the Settlement Proceeds in 2000, and filed a petition for dissolution of marriage on April 12, 2006. Although it is possible that a portion

of the Settlement Proceeds represents lost future income for the period after the petition was filed, Joseph did not present any evidence at the final hearing indicating this was the case. Instead, Joseph points to evidence that the Settlement Proceeds were invested and argues that because they were “not used for lost income during the marriage,” appellant’s brief at 4, they should have been excluded from marital property. As the foregoing caselaw makes clear, that the Settlement Proceeds were invested instead of spent does not supply an answer to what portion replaced lost income for the period before the dissolution petition was filed and what portion replaced lost income for the period thereafter. See Shannon, 847 N.E.2d at 205 (concluding trial court did not abuse its discretion in including lump-sum worker’s compensation award as marital property because “[h]usband did not present any evidence regarding how much of the . . . award was to cover his lost income after his injury but before the dissolution decree was filed”); cf. Beckley v. Beckley, 822 N.E.2d 158, 162-63 (Ind. 2005) (concluding that although a portion of husband’s lump-sum payment awarded under the Federal Employers’ Liability Act represented payment for lost future income for the period after the filing of the dissolution petition, the trial court did not abuse its discretion in including the entire amount as marital property because husband did not present any evidence indicating what portion of the payment represented lost future income for that period). Thus, we conclude Joseph has not rebutted the trial court’s presumptively correct decision to include the entire Settlement Proceeds as marital property subject to division.³

³ Although Joseph’s failure to present evidence in this regard constitutes sufficient grounds to affirm the trial court’s decision, we also note that the Settlement Proceeds were deposited into jointly titled investment accounts and that Joseph listed at least one of these accounts on the marital property division worksheet that he introduced into evidence at the final hearing. Cf. Shannon, 847 N.E.2d at 206 (noting that even if a portion of worker’s compensation benefits should have been excluded from marital property,

Conclusion

The trial court did not abuse its discretion when it included the Settlement Proceeds as marital property subject to division.

NAJAM, J., and MAY, J., concur.

husband invited the error because “he included his total worker’s compensation award in the list of marital property included in his proposed property division worksheet”).